

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION STUDENT-
ATHLETE CONCUSSION INJURY
LITIGATION**

MDL No. 2492
Master Docket No. 1:13-cv-09116
Judge John Z. Lee

**DECLARATION OF TIMOTHY J. McILWAIN IN SUPPORT OF
MOTION FOR LEAVE TO FILE FOR FEES AND EXPENSES**

I, Timothy J. McIlwain, declare as follows:

1. I am the owner and managing member of McIlwain, LLC. I represent Plaintiffs Chris Walker, Ben Martin and Dan Ahern (“*Walker* Class Representatives”) in the above-entitled action. I am submitting this declaration in support of my application for leave to file for an award of attorneys’ fees and expenses in connection with services rendered in the above-entitled action.
2. This motion for leave to file this application out of time because good cause exists for the relief requested.
3. On January 13, 2017, my paralegal Carol Crawford was instructed to file our application, but had a problem logging into the electronic filing system (ECF) on this matter and attempted to reach me to assist her. See Declaration of Carol Crawford.
4. When my paralegal Crawford attempted to reach me to assist her, but I was unreachable because I was on winery in Montalcino, Italy. Attached and made a part hereof is my plane

ticket wherein I flew to Italy on December 31, 2016 and returned on February 1, 2017 as Exhibit A.

5. When I found out about the log in issue it was too late to get the help from the ECF help desk to file my application for an award of attorney fees and expenses in connection with services rendered in this matter.
6. I am a New Jersey attorney that was filing for the first time in this District Court and contacted the ECF help desk the next business day, which resulted in our filing our application for fees and expenses on January 17, 2017.
7. Since February 6, 2017 I have been before the Honorable Raymond A. Reddin, J.S.C., in the Superior Court of New Jersey, Law Division for a jury trial on a 2011 employment case, *Gladys Munive v. Passaic County Bd. of SS, PAS-L-3805-11*.
8. The *Gladys Munive v. Passaic County Bd. of SS, PAS-L-3805-11* is expected to conclude March 22, 2017. Therefore, I will be unable to appear personally until after this jury trial finishes.
9. I support the Settlement in this matter.
10. I first became involved with this litigation in August of 2013 when Hausfeld, LLP requested that I be added to the pleadings of the *Walker* matter in the United States District Court, Eastern District of Tennessee and prior to Hausfeld, LLP being appointed by the Court as Special Class Counsel for Monitoring Relief.
11. I reviewed all documents electronically filed and mailed since the *Walker* Complaint was filed on September 3, 2013.
12. From the beginning I was asked to find an adequate class representative for the complaint's **primary focus on late-life cognitive impairment medical monitoring relief (for**

Dementia and CTE) on behalf of the older former NCAA football players. [Emphasis added].

13. I sought and found a former teammate of my college football coach, Joe Kapp, Plaintiff Bennie Charles Witukiewicz, who played football for the Kent State University “Golden Flashes” from 1964 to 1967. Mr. Witukiewicz played as a tight end. During his college career he experienced repeated traumatic head impacts. Mr. Witukiewicz was diagnosed with Parkinsons Disease on or about September, 2007. Mr. Witukiewicz believes that he suffered repeated traumatic head impacts over his college career, but due to his current condition cannot recall specific dates.
14. I obtained a written retainer from Mr. Witukiewicz and immediately contacted attorney Michael Hausfeld to inquire if they wanted to add a class representative.
15. After retaining Mr. Witukiewicz I obtained medical records and had my medical doctor paralegal review all of the medical literature referenced in every original complaint and tag along complaint in connection with this class action. Additionally, I drafted, but did not file a complaint on Mr. Witukiewicz’s behalf because of the potential conflict of interests.
16. From August 30, 2013 to June 1, 2014, I employed a medical doctor that worked as a paralegal on this matter. Attached and made a part hereof is CV of Joanie M. Kurland, M.D. as Exhibit B.
17. Dr. Kurland has previously worked for me as an expert on general medical knowledge on medical malpractice matters such as *Rosa v. Gaetano Buttitta, D.C. et. al., MRS-L-1627-10* and *Estate of Lucy Caplanis v. John Morone, M.D., PAS-L-156-12*.
18. Dr. Kurland’s medical review rate was \$250 per hour, but for purposes of this matter Dr. Kurland is billed at \$150 per hour along with the other paralegals in my office.

19. From November 2, 2013 to May 22, 2014, Dr. Kurland reviewed all the medical literature in connection with the concussion law suits and spent approximately 193 hours. However, I reduced her time approximately 100 hours for purposes of this application. Attached and made a part hereof is an itemization of Dr. Kurland's review time as Exhibit C.

20. Through December 31, 2016, the total number of hours spent on this litigation by me and members of my law practice is 150.75. The total lodestar amount for attorney/professional time based on current rates is **\$43,53.25**. Attached and made a part hereof is my plane ticket wherein I flew to Italy on December 31, 2016 and returning February 1, 2017 as Exhibit D.

21. When McIlwain, LLC brings cases on behalf of individual clients on a contingency basis, it charges between 33 1/3% and 40%, plus expenses depending on whether the matter is personal injury, civil rights or complex litigation.

22. In 2015, I was approved for a billable hourly rate of \$550 per hour in the federal class action matter of *In re NCAA Student-Athlete Name and Likeness Licensing Litigation, Northern District of California Case No. 09-cv-1967-CW*. Additionally, I have clients sign written retainers on civil rights matters recognizing my hourly rates at \$625 per hour. However, this rate has not been approved by any court to date but is shown below as a usual and customary rates charged for attorney's with twenty (20) years legal experience.

POSITION (Attorney or Paralegal)	YEARS OF EXPERIENCE/HOURS	HOURLY RATE	TOTAL
Timothy Mcilwain, Esquire	44.05 hours	\$625	\$27,531.25
Katie Saluzzi (Certified Paralegal)	2.8 hours	\$150.00	\$420
Joanie Kurland, M.D.	96 hours	\$150.00	\$14,400
Brooke Berry	7.9 hours	\$150.00	\$1,188
TOTALS	150.75		\$43,539.25

23. My firm incurred a total of **\$306.45** in expenses in connection with the prosecution of this litigation. They are broken down as follows:

EXPENSE CATEGORY	TOTAL
Meals, Hotel & Transportation	
Photocopies	120.10
Postage	
Telephone, Facsimile	
Messenger, Overnight Delivery	\$34.35
Filing, Witness & Other Fees (pacer costs)	\$152
Court Reporter	
Lexis, Westlaw, Online Library Research	
Class Action Notices/Business Wire	
Mediation Fees	
Experts/Consultants/Investigators	
TOTALS	306.45

24. The expenses pertaining to this case are reflected in the books and records of this firm.

These books and records are prepared from expense check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this February 21, 2017

s/Timothy J. McIlwain

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